TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1920

No. 384

PAUL J. PEPPE, PLAINTIFF IN ERROR,

vs.

THE STATE OF MINNESOTA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

FILED JANUARY 20, 1921.

(17,273.)

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SC US
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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 3, 1899.

1 The United States of America, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Minnesota, wherein Paul J. Petit is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Charles M. Start, chief justice of the supreme court of the State of Minnesota, this third day of January, in the year of our Lord one thousand eight hundred and ninety-nine.

CHAS. M. START,
Chief Justice Supreme Court of Minnesota.

To the State of Minnesota.

Due service of the above citation by copy is hereby admitted this fourth day of January, A. D. 1899.

W. B. DOUGLAS,
Attorney General of the State of Minnesota,
Per C. W. SOWERBY.
FRANK HEALY AND
H. D. DICKINSON,
Attorneys for State.

2 [Endorsed:] Original. Paul J. Petit, plaintiff in error, *vs.* State of Minnesota, defendant in error. Citation. Benton & Molyneaux, attorneys and counselors, 302-304 N. Y. Life building, Minneapolis, Minn. Certified. Filed Jan. 9, 1899. Darius F. Reese, clerk.

3 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the supreme court of the State of Minnesota, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Minnesota, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the suit between The State of Minnesota, plaintiff, and Paul J. Petit, defendant, wherein was drawn in question the validity of a statute of the State of Minnesota on the ground of the said statute being repugnant to the Constitution and laws of the United States and the decision was in favor of the validity of said statute, a manifest error hath happened, to the great damage of said Paul J. Petit, as by his complaint appears, we, being willing that error, if any hath been, shall be duly corrected and full and speedy justice done

to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the third day of January, in the year of our Lord one thousand eight hundred and ninety-nine.

[Seal U. S. Circuit Court, Dist. of Minnesota, Third Division.]

HENRY D. LANG,
Clerk of the Circuit Court of the United States for the District of Minnesota.

Allowed by—
CHARLES M. START,
Chief Justice of the Supreme Court of Minnesota.

4 [Endorsed:] Paul J. Petit, plaintiff in error, *vs.* State of Minnesota, defendant in error. Writ of error. Benton & Molyneaux, attorneys and counselors, 302-304 N. Y. Life building, Minneapolis, Minn. Certified. Filed Jan. 9, 1899. Darius F. Reese, clerk.

5 To the Honorable Charles M. Start, chief justice of the supreme court of the State of Minnesota:

Now comes Paul J. Petit and respectfully alleges and shows as follows:

1st. That your petitioner is a citizen of the United States of America and of the State of Minnesota, and is a barber by trade, residing in and carrying on a barbering business in the city of Minneapolis, in the State of Minnesota.

2nd. That heretofore an act was passed by the legislature of the State of Minnesota in the year 1885 and is now in force, being section 225 of the Penal Code of the State of Minnesota for the year A. D. 1885, which provides as follows:

"All labor on Sunday is prohibited except the works of necessity or charity. In works of necessity or charity is included whatever is needful during the day for the good order, health or comfort of the community." That on March 7th, A. D. 1887, an act was passed by the legislature of the State of Minnesota as follows:

"Be it enacted by the legislature of the State of Minnesota; Sec. 1. That sec. 225, chapter 1, title 10 of the Penal Code of the State of Minnesota is amended so as to read as follows: Section 225, *serval* labor. Labor on Sunday is prohibited except works of necessity or charity. In works of necessity or charity is included whatever is

needful during the day for good order, health, or comfort of the community; provided, however, that keeping open a barber shop on Sunday for the purpose of cutting hair and shaving beards shall not be deemed a work of necessity or charity. Section 2 of this act shall take effect and be in force from and after its passage. Approved March 7, 1887." See chapter 54 of the General Laws of Minnesota, 1887.

3rd. That on March 2, 1898, one William McQuoid filed a complaint in the municipal court of the city of Minneapolis, Hennepin county, Minnesota, as follows:

6 "STATE OF MINNESOTA, } ss:
County of Hennepin, }

"Municipal Court, City of Minneapolis.

"William McQuoid, being duly sworn, makes complaint to the above-named court and says that on the 6th day of March, A. D. 1898, at the city of Minneapolis, in said county of Hennepin and State of Minnesota, Paul J. Petit then and there did wilfully, unlawfully, and wrongfully do and perform labor on said day, which said day was then and there the first day of the week, commonly called Sunday, in that said Paul J. Petit did then and there keep open a barber shop for the purpose of cutting hair and shaving beards, at that certain barber shop known and described as No. 600 Nicollet avenue, and did then and there in said barber shop wilfully, unlawfully, and wrongfully shave with a razor the face and beard of one John Doe, whose true name is to complainant unknown; which said labor was done as aforesaid and was not then a work of necessity or charity, contrary to the statutes in such case made and provided and against the peace and dignity of the State of Minnesota.

"Wherefore complainant prays that said offender may be arrested and dealt with according to law.

"W. McQUOID.

"Sworn to and subscribed and complained of before me this 7th day of March, 1898.

"H. MOORE,
"*Deputy Clerk of Municipal Court.*"

That afterwards, on March 7th, 1898, a warrant was duly issued, under and pursuant to said complaint, for the arrest of said Paul J. Petit, charging him with the violation of said act as set out in said complaint. Petitioner was afterwards, on the 16th day of March, A. D. 1898, tried before said municipal court of the city of Minneapolis, Hennepin county, Minnesota, upon said charge and fined ten ($10.00) dollars; that a stay was taken, staying the execution of said judgment, and a motion for a new trial was made therein; which motion was denied by said municipal court, and an appeal was duly taken from said judgment of conviction and order denying said motion for a new trial to the supreme court of the State

of Minnesota; which said order and judgment was afterwards, on the — day of December, A. D. 1898, duly affirmed by said supreme court of the State of Minnesota; that said supreme court of the State of Minnesota is the highest court of law or equity in said State of Minnesota in which a decision could be had in said suit, and the final judgment was rendered in said court and en-
7 tered in said clerk's office against said defendant, adjudging him guilty, as found by said municipal court of the city of Minneapolis on the — day of December, A. D. 1898; that said petitioner claimed at said trial in said municipal court and the ground on which said appeal was taken to the supreme court and said conviction was contested by the petitioner is that said statute hereinbefore quoted is void, not only because it is an improper exercise of the police power of the State of Minnesota, but void also because it is in violation of the 14th amendment of the Constitution of the United States, providing "nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny any person within its jurisdiction the equal protection of the law."

4th. That your petitioner is advised by counsel, and verily believes, that this is a case provided for by section 709 of the Revised Statutes of the United States, in which the validity of said statute is drawn into question as being repugnant to the Constitution of the United States and to the rights granted thereunder to citizens of the several States, and where a decision of the highest State court has been rendered in favor of said stat-e.

5th. That it was adjudged by said supreme court and by its final judgment in said suit that said statute hereinbefore quoted was not repugnant to or in violation of said provision of the Constitution of the United States hereinbefore quoted, and it was adjudged by said court that your petitioner was not thereunder deprived of the equal protection of the laws and was not deprived of his property without due compensation or due process of law, contrary to the provisions of the 14th amendment of the Constitution of the United States; all of which appears in the records, files, and pleadings in said suit on file in the office of the clerk of said supreme court, whereby manifest error has happened, to the great damage of said defendant.

8 Wherefore the said petitioner prays for the allowance of a writ of error and for such other process as may cause the same to be corrected by the Supreme Court of the United States.

BENTON & MOLYNEAUX,
Attorneys for said Petitioner, Paul J. Petit.

Allowed:

CHARLES M. START,
Chief Justice of the Supreme Court of the State of Minnesota.

STATE OF MINNESOTA, } ss:
County of Hennepin, }

Paul J. Petit, duly sworn, says that he is the petitioner in the foregoing petition; that he has read said petition and knows the

contents thereof; that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to those matters he believes it to be true.

PAUL J. PETIT.

Subscribed and sworn to before me this 21st day of December, A. D. 1898.

JOSEPH W. MOLYNEAUX,
[SEAL.] *Notary Public, Hennepin County, Minn.*

9 [Endorsed:] Benton & Molyneaux, attorneys and counselors, 302–304 N. Y. Life building, Minneapolis, Minn.

10 Know all men by these presents that we, Frederick D. Underwood and Paul J. Petit, are held and firmly bound unto the State of Minnesota in the full and just sum of two hundred and fifty ($250.00) dollars, to be paid to the said State of Minnesota or its attorneys or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this third day of January, in the year of our Lord one thousand eight hundred and ninety-nine.

Whereas lately, in the supreme court of the State of Minnesota, in a suit pending in said court between The State of Minnesota, plaintiff, and Paul J. Petit, defendant, judgment was rendered against the said defendant, and the said defendant having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said State of Minnesota, citing and admonishing it to be and appear at the Supreme Court of the United States, to be holden at Washington the second Monday of October next: Now, the condition of the above obligation is such that if the said Paul J. Petit shall prosecute said writ of error to effect and answer all damages and costs, if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

PAUL J. PETIT. [SEAL.]
FREDERICK D. UNDERWOOD. [SEAL.]

Sealed and delivered in presence of—
HENRY W. BENTON.
J. W. MOLYNEAUX.

Approved by—
CHARLES M. START,
Chief Justice of the Supreme Court of Minnesota.

We hereby approve above bond.

FRANK HEALY AND
H. D. DICKINSON,
Attorneys for State.

Jan'y 3rd, 1899.

11 [Endorsed:] Paul J. Petit, plaintiff in error, *vs.* State of Minnesota, defendant in error. Bond. Benton & Molyneaux, attorneys and counselors, 302–304 N. Y. Life building, Minneapolis, Minn. Certified. Filed Jan. 9, 1899. Darius F. Reese, clerk.

12 In the Supreme Court of the United States.

PAUL J. PETIT, Plaintiff in Error,
vs.
STATE OF MINNESOTA, Defendant in Error. } Assignments of Error.

The plaintiff in error respectfully submits that the supreme court of Minnesota erred in this:

1. Said court in and by said judgment held valid that certain statute of the State of Minnesota, viz., section 225 of the Penal Code of the State of Minnesota for the year A. D. 1885, which provides as follows: "All labor on Sunday is prohibited, except works of necessity or charity. In the works of necessity or charity is included whatever is needful during the day for the good order, health or comfort of the community," with the amendment thereto passed by the legislature of the State of Minnesota on March 7th, A. D. 1887, which reads as follows:

"Be it enacted by the legislature of the State of Minnesota, section 1, that section 225, chapter 1, title 10 of the Penal Code of the State of Minnesota is amended so as to read as follows:

"SECTION 225—*Serval* labor.—Labor on Sunday is prohibited except works of necessity or charity. In works of necessity or charity is included whatever is needful during the day for the good order, health, or comfort of the community; provided, however, that keeping open a barber shop on Sunday for the purpose of cutting hair and shaving beards shall not be deemed a work of necessity or charity. Section 2 of this act shall take effect and be in force from and after its passage. Approved March 7th, A. D. 1887." See chapter 54 of the General Laws of Minnesota for the year A. D. 1887.

2. The court in and by said judgment adjudged that said statute as amended in the year A. D. 1887 did not violate that clause of the Constitution of the United States which provides that "no person shall be deprived of life, liberty or property without
13 due process of law, nor deny any person within its jurisdiction the equal protection of the law."

3. In and by said judgment the court adjudged that the claim and plea of the said defendant to the effect that said statute as amended in the year A. D. 1887 did violate the said clause of the Constitution of the United States be overruled and held bad, and also held and adjudged that the claim and plea of said defendant to the effect that said amendment violated the said clause of the Constitution of the United States be overruled and held bad.

4. In and by said judgment the court adjudged that said statute of the State of Minnesota, including said statute as amended in the year A. D. 1887, was a valid and lawful police regulation, overruling

therein and thereby the claim of said defendant that it was not a police regulation and was invalid under and by virtue of the clause before mentioned of the Constitution of the United States.

5. That said court erred by the judgment entered in the above-entitled action against the contention of the defendant in error that the conviction of said defendant in said action was valid, and that said statute hereinbefore set out was not at variance with the 14th amendment of the Constitution of the United States and was a proper exercise of the police powers of the State of Minnesota, and it is contended by said defendant that judgment ought to have been given for said Paul J Petit, acquitting him and releasing him from the charge made against him in said action, on the ground that said law hereinbefore mentioned is unconstitutional and repugnant to the 14th amendment of the Constitution of the United States.

PAUL J. PETIT,
By BENTON & MOLYNEAUX,
His Attorneys.

Dated January 3d, A. D. 1899.

14 [Endorsed:] 11314. Paul J. Petit, plaintiff in error, *vs.* State of Minnesota, defendant in error. Assignments of error. Benton & Molyneaux, attorneys and counselors, 302–304 N. Y. Life building, Minneapolis, Minn. Certified. Filed Jan. 9, 1899. Darius F. Reese, clerk.

15 *Assignments of Error Made and Filed by Defendant and Appellant in said Supreme Court.*

1. The court erred in permitting any evidence to be introduced under the complaint in this action over defendant's objection to the same, as appears by paper books, folios 15 to 17.

2. The court erred in refusing to dismiss said action and discharge the said defendant, as appears by paper book, folios 47 to 49.

3. The court erred in finding the said defendant guilty of the charge made against him.

4. The court erred in sentencing said defendant, as appears by the paper book herein.

5. The court erred in refusing defendant a new trial and in denying defendant's motion therefor.

6. The court erred in not holding to be unconstitutional the law under which the complaint in this action is drawn, viz., the amendment of 1887 to sec. 6513, Statutes of Minnesota.

STATE OF MINNESOTA, } ss:
Supreme Court, }

I, D. F. Reese, clerk of the supreme court of the State of Minnesota, do hereby certify that the above and foregoing assignments of error *was* made and filed by defendant and appellant in the above-entitled action of The State of Minnesota, respondent, *vs.* Paul J. Petit, appellant; said assignments of error *was* filed in said supreme

court on the 2nd day of September, A. D. 1898, in accordance with the rules and practice of said court, and became and constituted a part of the record upon which said cause was heard, tried, and determined and upon which the same was argued and submitted in said court.

In testimony whereof I have hereunto set my hand and affixed the seal of the supreme court of the State of Minnesota, at the capitol of St. Paul, Minnesota, this 17th day of January, A. D. 1899.

[Seal of the Supreme Court, State of Minnesota.]

D. F. REESE,
Clerk of Supreme Court, State of Minnesota.

16 Endorsed: 11314. State of Minnesota, in the supreme court. The State of Minnesota, respondent and plaintiff, vs. Paul J. Petit, appellant and defendant. Assignment of errors. Endorsed: Filed Jan'y 9, 1899. D. F. Reese, clerk.

17 STATE OF MINNESOTA:

Supreme Court, October Term, A. D. 1898.

STATE OF MINNESOTA, Plaintiff,
vs.
PAUL J. PETIT, Defendant.

Before Hon. W. A. Kerr.

March 2nd, 1898, William McQuoid files complaint against defendant for keeping barber shop open on Sunday. On March 6th, 1898, warrant issued and returned. March 8th, 1898, 9 o'clock a. m., cause called. Defendant being in custody, and in open court, pleads not guilty. Whereupon cause continued to March 16th, 1898, 9 o'clock a. m., and defendant released on his personal recognizance until said time. March 16th, 1898, 9 o'clock a. m., cause called, defendant being in custody and — open court. Whereupon William McQuoid and J. L. Fawcette are sworn, and testify on behalf of the State. State rests. Defendant rests. Evidence closed. Defendant is adjudged guilty; where-

18 upon stay of sentence ordered until March 28th, 1898, 9 o'clock a. m., and cause continued to said time. March 28th, 1898, 9 o'clock a. m., cause called, defendant being in custody and in open court. Whereupon it is ordered that defendant pay a fine of ten dollars, and in default thereof, be imprisoned in the workhouse of the city of Minneapolis, until said fine is paid, not exceeding term of ten days; and stay of execution of sentence until April 7th, 1898, ordered and defendant released on his personal recognizance until said time. April 7th, 1898, cause continued to April 18th, 1898, 9 o'clock a. m. April 14, 1898, settled case. Notice of motion for new trial. Order denying new trial, and motion of appeal to supreme court filed. April 18th, 1898, stay extended to April 23rd, 1898. April 23rd, 1898, stay extended to May 3rd, 1898.

April 28th.—Bond in appeal to supreme court, and order for stay pending appeal filed.

A. S. ALLEN, *Clerk*,
By J. F. WHEATON, *Deputy*.

(Title of Cause.)

Notice of Motion for New Trial.

Please take notice that at the municipal court-rooms, in the court-house, in the city of Minneapolis, upon Wednesday, April 14th, 1898, at nine o'clock in the forenoon of said day, or as soon thereafter as counsel can be heard, at a special term of said court, then and there to be held, the defendant in this action, by and through his attorneys, the undersigned, will move the said court for a
19 new trial to be granted herein; said motion to be based upon the records and files in this action and upon the settled case to be then and there filed with the clerk of said court in this action. That said motion for a new trial will be made upon the following grounds, to wit:

1st. That the judgment and decision of said court, who tried this case, including his findings of fact and conclusions of law, are not justified by the evidence, and are contrary to law.

2nd. That said defendant was found guilty by the court contrary to law.

3d. That the complaint in this action does not charge the defendant with a crime under the laws of this State.

4th. That the evidence does not show the defendant to be guilty of any crime under the laws of this State.

5th. That the acts charged in the complaint do not constitute a crime or offense under the laws of this State.

6th. Section 6513 of the General Statutes of Minnesota, under which this charge is made, is unconstitutional and is repugnant to the fourteenth amendment to the Constitution of the United States.

7th. That section 6514 of the General Laws of the State of Minnesota, under which this charge is made, is unconstitutional in that it is repugnant to section 7, of article 1, of the constitution of the State of Minnesota.

Also on the ground that the statute in question, under which this charge is made, is an invasion of the reserved rights of this defendant under the Constitution and laws of the United States and of the State of Minnesota.

20 8th. Errors of law occurring at the trial and excepted to by the defendant.

BENTON & MOLYNEAUX,
Attorneys for Defendant, Nos. 302-304 New York Life Building, Minneapolis, Minnesota.

To H. D. Dickinson, Esq., attorney for State of Minnesota.

(Title of Cause.)

Order.

The motion for a new trial made by the defendant herein coming on for hearing, the State appeared by its attorney, H. D. Dickinson, Esq., and the defendant appeared by his attorneys, Messrs. Benton & Molyneaux.

After duly considering the matter, it is hereby ordered: that said motion be, and the same is denied.

Dated April 14th, 1898.

By the court:

W. A. KERR,
Judge of Municipal Court.

(Title of Cause.)

Notice of Appeal to Supreme Court.

Please take notice that the above-named defendant hereby appeals to the supreme court of the State of Minnesota from the order of the said municipal court, entered herein in the office of the clerk of said court on the fourteenth day of April, 1898, in favor
21 of the State of Minnesota and against the said defendant, denying defendant's motion for a new trial herein.

Dated April 14th, 1898.

BENTON & MOLYNEAUX,
Attorneys for Defendant, Nos. 302–304 New York Life Building, Minneapolis, Minnesota.

To H. D. Dickinson, Esq., attorney for State of Minnesota, and to Ed. Allen, clerk of said municipal court.

Due service of the within notice of appeal was made upon H. D. Dickinson, Esq., attorney for State of Minnesota, April 14th, 1898, and also upon clerk of said court.

Service of the within notice of appeal is hereby admitted, this 17th day of May, 1898.

H. W. CHILDS,
Attorney General.

STATE OF MINNESOTA, } ss:
County of Hennepin, }

Municipal Court, City of Minneapolis.

William McQuoid, being duly sworn, makes complaint to the above-named court, and says that on the 6th day of March, A. D. 1898, at the city of Minneapolis, in said county of Hennepin and State of Minnesota, Paul J. Petit then and there being, did wilfully, unlawfully, and wrongfully do and perform labor on said day which said day was then and there the first day of the week, commonly called Sunday, in that said Paul J. Petit did then and there keep

open a barber shop, for the purpose of cutting hair and shaving beards, at that certain barber shop known, designated, and described as number 600 Nicollet avenue, and did then and there in said barber shop wilfully, unlawfully, and wrongfully shave with a razor the face and beard of one John Doe, whose true name is to complainant unknown, which said labor so done as aforesaid was not then and there a work of necessity or charity, contrary to the statute in such case made and provided, and against the peace and dignity of the State of Minnesota.

Wherefore, complainant prays that said offender may be arrested and dealt with according to law.

W. McQUOID.

Sworn to and subscribed and complained of before me this 7th day of March, A. D. 1898.

H. MOORE,
Deputy Clerk of Municipal Court.

STATE OF MINNESOTA, }
County of Hennepin. }

Municipal Court, City of Minneapolis.

STATE OF MINNESOTA }
vs. }
PAUL J. PETIT, Defendant. }

The above-entitled cause came on for trial and was tried on the 16th day of March, A. D. 1898, before Hon. William A. Kerr, judge of said court, without a jury; H. D. Dickinson, Esq., appearing for the State and Messrs. Benton and Molyneaux appearing for the defendant, when the following proceedings were had:

WILLIAM McQUOID, after being first duly sworn, testified:

By Mr. DICKINSON:

Q. Do you live in this city, Mr. McQuoid?
A. Yes, sir.
Q. Where?
A. 3016 Hennepin avenue.
Q. What is your business?
A. I am a barber.
Q. Do you know the defendant, Mr. Paul J. Pettit?
A. I do.

Mr. MOLYNEAUX: I object to the introduction of any testimony, under this complaint, on the ground, first, that it does not charge a crime under the laws of the State of Minnesota; that the law under which the charge is brought is unconstitutional and void, both under the State constitution and the Constitution of the United States.

The COURT: Objection overruled.

Exception taken by defendant:

Q. What is his business, Mr. McQuoid?
A. He is a barber.
Q. Where is his place of business?
A. At the corner of Nicollet avenue and Sixth street—600 Nicollet avenue, I think is the number.
Q. What has he to do with that place?
A. He is the proprietor of that establishment run in his name.
Q. Is it a regular, ordinary barber shop?
A. Yes.
Q. Where is it run?
A. In the basement.
Q. In the basement?
A. Yes, sir.
Q. That is on the corner of Sixth street and Nicollet avenue here in this city?
A. Yes, sir.
Q. How large a place is it, Mr. McQuoid?
A. Mr. Petit runs five chairs; I believe there are six in the establishment.
Q. That is five barber chairs?
A. Yes.
Q. How many men are employed in the place?
A. He employs four men as barbers and two porters.
Q. Operating these different chairs?
A. Yes.
Q. The barber shop is run for what purpose?
24 A. For the purpose of cutting hair, shaving beards, trimming beards, shampooing hair and giving baths.
Q. Were you at that place on the 6th day of March, 1898?
A. I was.
Q. State what you saw there in regard to the place as to its being open or closed.
A. In that shop at the back end there is an alcove with curtains dividing it from the main part of the shop; during the week they are usually looped back and that is thrown open usually as the waiting-room for customers waiting their turn.
Q. Was the shop open or closed?
A. The shop was open.
Q. How many entrances?
A. One entrance.
Q. It was open, I understand?
A. It was open.
Q. How many men were engaged in there working in the shop?
A. One barber. The porters, of course, do their work on Sunday.
Q. Did you see the barber there?
A. I did.
Q. And the porters were there?
A. Yes, sir.
Q. Do you know their names?
A. I don't.
Q. Was Mr. Petit there?
A. Yes.

Q. What was the barber doing?

A. He was shaving a gentleman; Mr. Petit was the barber and not any of his men.

Q. Was there any of his barbers there beside Mr. Petit?

A. None of his barbers, no.

Q. He was there doing what?

A. Shaving a gentleman.

Q. Did you go in and have your work done?

A. I had no work done.

Q. Did you see him operate on more than one person?

A. I did not—only one.

25 Q. Who was with you?

A. Mr. J. L. Faussett, of this city.

Q. Did you see any others go in the place?

A. I did.

Q. Well, now state what you did see regarding other customers, if anything, or people about there.

A. There were several men in the shop that I didn't know. One man came in while I was there, I know him by sight, but I don't know his name; he was a bartender at the West hotel.

Q. What did he do?

A. He took his seat to wait until his turn for a shave.

Q. Was anything said to him?

A. I don't know whether he was greeted or not; I said "Good morning" to him myself.

Q. Were you in the place at that time?

A. Yes.

Q. Did you sit down?

A. No.

Q. Did you see anybody else go in or come out?

A. I did not.

Q. How long did you stay there?

A. Not more than three minutes.

Q. The gentleman whose name you have mentioned was in there with you?

A. Yes; he went in with me and came out with me.

Q. During this time the barber was only operating on one man?

A. That is all.

Q. Located in one of the barber chairs?

A. Yes, but it wasn't located where it is during the week.

Q. But it was in the same shop?

A. Yes.

Q. What time of the day was it?

A. It was about fifteen minutes after eleven, to the best of my recollection.

Q. In the forenoon?

A. In the forenoon.

Q. That was on Sunday?

A. Yes.

26 Q. The process consisted of what in the way of labor?

A. The process consisted of shaving the beard of a man with a razor.

Q. That consisted of what acts?
A. Drawing the razor over his face to take the beard off.
Q. And preparatory to that, what?
A. Preparatory to that he lathered the man's face and strapped his razor.
Q. And a subsequent washing, I suppose?
A. The subsequent washing, yes; I didn't see it.

Cross-examination.

By Mr. MOLYNEAUX:

Q. The door was locked when you went to him, was it not?
A. No, sir, it was open—unlocked.
Q. Who let you in?
A. I walked in.
Q. Did you open the door yourself?
A. I opened the door myself.
Q. Was the porter there to open it for you?
A. The porter was there, but he didn't open the door.
Q. Didn't the porter refuse you admittance?
A. No.
Q. What did he say to you?
A. He didn't speak to me on this occasion.
Q. You went in there twice that day, didn't you?
A. I was there a few minutes before that.
Q. How did you get in at that time?
A. I got in the same way.
Q. Did the porter open it for you?
A. No.
Q. What did he say to you at that time?

Mr. DICKINSON: Objected to as incompetent, irrelevant and immaterial.

The COURT: Objection sustained.

27 Mr. MOLYNEAUX: I wish to show that he asked to be shaved and the porter refused him and said they were not shaving.

The COURT: Objection overruled.

WITNESS: I asked the porter if Charles Ellers was in the shop; I stated to him in transacting a little business with Mr. Ellers, a few evenings before, I had mislaid a small pocketbook and thought I left it there; he said Mr. Eliers wasn't in the shop and I went out.

Q. How many chairs are there in that shop?
A. Six.
Q. Those chairs are usually run on week days, are they not?
A. Five of them are.
Q. Where are those chairs situated in the shop—in the outside main room, are they not?
A. Yes.

Q. There is a little room back of that curtain—cut off by a drop-curtain?
A. Yes, sir.
Q. Where was Paul Petit when you were there?
A. In this little room beyond the curtains.
Q. None of the other barbers were in there?
A. No.
Q. None of the chairs being run?
A. None of the chairs being run.
Q. Paul was back in this little room shaving a man?
A. Yes.
Q. The first time you went in there did you ask to be shaved?
A. I did not.
Q. You went in there for the purpose of seeing whether he was shaving anybody?
A. That was my object.

Redirect examination.

By Mr. DICKINSON:

Q. You said that a razor was used in this operation, did you not?
A. Yes.
28 Q. Of shaving?
A. Yes.
Q. What was the porter doing?
A. The first time I went in the shop the porter was shining a gentleman's shoes, and the second time one of them was cleaning a mirror. I don't know what the other one was doing.
Q. Were the porters engaged in cleaning the shop?
A. Yes.
Q. This door is adjacent to the street, being reached by a stairway coming down from the sidewalk?
A. Yes.

Recross-examination:

By Mr. MOLYNEAUX:

Q. Why did you ask for Charlie Ellers?
A. Mr.——

Mr. DICKINSON: Objected to as incompetent, irrelevant, and immaterial.
The COURT: Objection sustained.

Redirect examination.

By Mr. DICKINSON:

Q. Are you connected with any association at all?
A. I am——

Mr. MOLYNEAUX: Objected to as immaterial.
The COURT: Objection sustained.

J. L. FAUSSETT, after being first duly sworn, testified.

By Mr. DICKINSON:

Q. What is your business, Mr. Faussett?
A. I am a barber.
Q. Are you a resident of this city?
A. Yes, sir.
Q. How long have you lived here?
A. About eight years.
29 Q. Do you know Mr. Petit, the defendant?
A. I do.
Q. Know where his place of business is?
A. I do.
Q. Where?
A. Sixth street and Nicollet avenue.
Q. Number six hundred?
A. I don't know what the number is.
Q. What part of the place?
A. It is in the basement.
Q. And what is it?
A. It is a barber shop.
Q. Consisting of what?
A. Barber shop and bath-rooms.
Q. Chairs—barber chairs?
A. Yes; and sitting chairs.
Q. Mirrors in front of them?
A. Mirrors in front of them.
Q. Were you there on the 6th day of March, 1898?
A. Was that on a Sunday?
Q. I am asking you.

Mr. MOLINEAUX: We will concede it was Sunday.

Q. It was on Sunday you were there?
A. Yes, sir.
Q. Were you there with this gentleman?
A. Yes, sir.
Q. The first part of March, some time?
A. Yes, sir.
Q. What time of the day?
A. Well, I should judge it was about eleven o'clock.
Q. What did you see there? What did you do first?
A. I went down with Mr. McQuoid into the barber shop and went out again.
Q. You went into the barber shop?
A. Yes, sir.
Q. Was the door to the shop open or closed?
A. It was closed.
30 Q. Locked or unlocked?
A. Unlocked.
Q. Was the shop closed or open for business?

A. Well, that would be hard to say; I didn't see anybody working except Mr. Petit.
Q. Well, did you see anybody else working there?
A. I saw some porters working there.
Q. Well, they are the ones usually employed in the shop when it is open?
A. Yes, sir.
Q. What were they doing?
A. When I first went down they were shining shoes.
Q. For who?
A. I don't know the gentleman.
Q. You don't know whether they were customers of the place or not?
A. I don't.
Q. What was Mr. Petit doing?
A. He was shaving a man.
Q. How long was that from the first time?
A. A space of perhaps ten minutes.
Q. You didn't see Mr. Petit there the first time?
A. No, sir.
Q. He was there the second time?
A. Yes, sir.
Q. Shaving a man's face?
A. Yes, sir.
Q. With a razor?
A. Yes, sir.
Q. Sitting in what portion of the shop?
A. In the little room back.
Q. In what kind of an apparatus?
A. In a barber chair.
Q. Before a mirror?
A. I didn't see no mirror.
Q. What were the porters doing the second time you were in there?
A. One of them was cleaning a looking-glass.
Q. Did you see any other customers come in?
A. I saw one gentleman; I don't know whether he was a customer or not.
31 Q. Did he come in while you were in there?
A. Yes, sir.
Q. What did he do?
A. I didn't pay any attention to what he did, I was a little excited after catching Mr. Petit.
Q. What did he do?
A. He walked by me.
Q. Do you know whether he was one of the customers or not?
A. No.
Q. You don't know whether he took off his coat or not?
A. No.
Q. Did Mr. Petit say anything to him?
A. I don't know, I didn't hear him.

Q. You didn't hear him say "next" or anything of that kind?
A. No, sir.

Cross-examination.

By Mr. MOLYNEAUX:

Q. You went in with Mr. McQuoid?
A. Yes, sir.
Q. Did the porter stop you the first time you went in?
A. No, sir.
Q. What did he say to you?
A. He didn't say anything to me.
Q. What did you say to him?
A. I didn't say anything to him.
Q. What time was this that you went in?
A. I should judge about eleven o'clock.
Q. No barbers in the shop the first time you went in?
A. No.
Q. None at all?
A. No.
Q. The porters were working around in there?
A. Yes.
Q. Cleaning mirrors?
A. No, they were shining shoes.
Q. The second time cleaning mirrors?
A. Yes.
32 Q. The second time you went, Paul Petit was in there in the back part of the shop shaving a man?
A. Yes, sir.

Mr. DICKINSON: State rests.

Mr. MOLYNEAUX: Defendant rests and moves that the case be dismissed.

Mr. MOLYNEAUX: I move the court that the defendant be discharged and this action be dismissed on the following grounds:

First. That the complaint does not charge the defendant with the crime under the laws of this State.

Second. That the evidence does not show the defendant to be guilty of any crime under the laws of this State.

Third. For the reason that the acts charged in the complaint do not constitute a crime or offense under the laws of this State.

Fourth. That section 6513 of the General Statutes of Minnesota, under which this charge is made, is unconstitutional and is repugnant to the 14th amendment of the Constitution of the United States.

Fifth. That said section 6513 of the general laws of the State of Minnesota, under which this charge is made, is unconstitutional in that it is repugnant to section 7 of article one of the constitution of this State; also on the ground that the statute in question, under which this charge is made, is an invasion of the reserved rights of this defendant under the Constitution and laws of the United States and the State of Minnesota.

By the COURT: Motion denied.

33 Mr. MOLYNEAUX: The defendant excepts to the ruling of the court.

By the COURT: I find the defendant guilty as charged in the complaint.

Mr. DICKINSON: I move the court that the defendant be sentenced.

The COURT: It is ordered that the defendant pay a fine of ten dollars, and in default thereof be imprisoned in the workhouse of the city of Minneapolis until said fine is paid, not exceeding the term of ten days.

The above judgment is duly entered upon the records of said court in the office of the clerk of said court.

Proceedings under said judgment stayed for the purposes of appeal to the supreme court.

It is hereby stipulated by and between the respective parties herein, through their respective attorneys, that the foregoing settlement of case is true and correct, and contains all of the evidence produced on the trial of the case and the objections and exceptions made and taken to the same, and all of the proceedings had on the trial of the same, and, it is hereby stipulated, may be allowed by the court as the settled case.

H. D. DICKINSON,
Attorney for Plaintiff.
BENTON & MOLYNEAUX,
Attorney- for Defendant.

I hereby certify that I have examined the foregoing settlement of case and find that it is true and correct; that it contains all of the evidence produced in the trial of the case, and of the ob-
34 jections and exceptions made and taken on the same, and all of the proceedings had on the trial of the same, and the same is hereby allowed as the settled case herein.

Dated April 2nd, 1898.

W. A. KERR, *Judge.*

35 11314.

STATE OF MINNESOTA:

Supreme Court, October Term, A. D. 1898.

STATE OF MINNESOTA, Respondent,
vs.
PAUL J. PETIT, Appellant. } No. 14. Syllabus.

The State may, as a police regulation, for the promotion of the physical, mental, and moral welfare of its citizens, establish, as a civil and political institution, the first day of the week as a day of rest and prohibit the performance upon it of all labor or business except works of necessity or charity.

Gen. St. 1894, sec. 6513, is not obnoxious to the objection of being "class legislation," because it declares that, as a matter of law, keeping open a barber shop on Sunday for the purpose of hair-cutting

and shaving is not a work of necessity or charity, while as to other kinds of labor or business it leaves that question to be determined as one of fact.

Judgment affirmed.

36 11314.

STATE OF MINNESOTA:

Supreme Court, October Term, A. D. 1898.

STATE OF MINNESOTA, Respondent,
vs.
PAUL J. PETIT, Appellant. } No. 14. Opinion.

The defendant was tried and convicted of keeping open a barber shop on Sunday for the purpose of cutting hair and shaving beards, contrary to the provisions of Gen. St. 1894, sec. 6513, which reads as follows:

"All labor on Sunday is prohibited excepting the works of necessity or charity. In works of necessity or charity is included whatever is needful during the day for good order, health or comfort of the community; provided however that keeping open a barber shop on Sunday for the purpose of cutting hair and shaving beards shall not be deemed a work of necessity or charity."

The only question is as to the constitutionality of this act, which is assailed by the defendant on two grounds: 1st, that the whole act is invalid, it not being within the police power of the State to prohibit any kind of labor or business on Sunday which does not interfere with the peace and good order of the community, and, 2nd, and mainly, that, in view of the proviso, the act is invalid as being "class legislation."

I. We shall not spend much time on the first point. It has been decided in this State, in accordance with an almost unbroken line of authorities elsewhere, that the legislature may, in the exercise of the police power of the State, establish by law, as a civil and
37 political institution, the first day of the week as a day of rest, and may prohibit upon it the performance of any manner of labor, business, or work except only works of necessity or charity. State *v.* Ludwig, 21 Minn., 202. So-called Sunday legislation has with many persons, and occasionally even with courts, been the subject of adverse criticism as an unwarranted interference with that freedom of religious belief and practice which is guaranteed to every man by the Constitution. These criticisms proceed upon an entirely erroneous theory as to the object of such legislation. In some States it has been held that Christianity is part of the common law of this country, and Sunday legislation is upheld, in whole or in part, upon that ground.

Even if permissible, it is not necessary to resort to any such reason to sustain such legislation. The ground upon which such legislation is generally upheld is that it is a sanitary measure, and as such a legitimate exercise of the police power.

It proceeds upon the theory, entertained by most of those who have

investigated the subject, that the physical, intellectual, and moral welfare of mankind requires a periodical day of rest from labor, and as some particular day must be fixed, the one most naturally selected is that which is regarded as sacred by the greatest number of citizens, and which by custom is generally devoted to religious worship or rest and recreation, as this causes the least interference with business or existing customs. It is sometimes said that mankind will seek cessation of labor at proper times by the natural influences of the law of self-preservation; also that if a man desires to engage on Sunday in any kind of work or business which does not interfere with the rights of others he has an absolute right to do so, and to choose his own time of rest as he sees fit. The answer to this is that all men are not in fact independent and at liberty to
38 work when they choose. Labor is in a great degree dependent upon capital, and unless the exercise of power which capital affords is restrained, those who are obliged to labor will not possess the freedom for rest which they would otherwise exercise. The object of the law is not so much to protect those who can rest at pleasure, but to affords rest to those who need it and who from the conditions of society could not otherwise obtain it. Moreover, if the law was not obligatory upon all, and those who desired to do so were permitted to engage in their usual avocation on Sunday, others engaged in the same kind of labor or business might, against their wishes, be compelled by the laws of competition in business to do likewise. See dissenting opinion of Justice Field in *Ex parte* Newman, 9 Cal., 502, afterwards adopted as the views of the court in *Ex parte* Andrews, 18 Cal., 685.

II. The enacting clause of the statute under which defendant was convicted was passed in 1885, being section 225 of the Penal Code. The proviso was added in 1887. Laws 1887, ch. 54.

If keeping a barber shop open on Sunday for the purposes of shaving and hair-cutting was not a work of necessity or charity within the meaning of the original statute, the amendment has not changed the law, and the statute as it now stands is not open to the objection of being class legislation. Under the original statute what were works of necessity or charity was largely left to be decided as a question of fact, which would often be a question for the jury. The effect of the amendment was to make this a question of law instead of fact, as to keeping a barber shop open.

In the exercise of the police power in establishing a day of rest a very large discretion must be allowed to the legislature in determining what kinds of labor or business should be prohibited and what are and what are not works of necessity or charity, and unless their classification is manifestly purely arbitrary, and not
39 founded upon any substantial distinction or apparent natural reason which suggest the necessity or propriety of different legislation, the courts have no right to interfere with the exercise of legislative discretion. Courts will take judicial notice of the fact that, in view of the custom to keep barber shops open in the evening as well as in the day, the employés in them work more and during later hours than those engaged in most other occupations,

and that this is especially true on Saturday afternoons and evenings; also that, owing to the habit of so many men to postpone getting shaved until Sunday, if such shops were to be permitted to be kept open on Sunday, the employés would ordinarily be deprived of rest during half of that day. In view of all these facts, we cannot say that the legislature has exceeded the limits of its legislative police power in declaring that, as a matter of law, keeping barber shops open on Sunday is not a work of necessity or charity, while as to all other kinds of labor they have left that question to be determined as one of fact.

It will be noted that what the law forbids is not a man's shaving himself, or even getting some one else to shave him, but the keeping open a barber shop for that purpose on Sunday.

The object of the law was not to interfere with those who wish to be shaved on Sunday, or primarily to protect the proprietors of barber shops, but mainly to protect the employés in them by insuring them a day of rest.

We are of opinion that the whole act, including the proviso, is valid.

Judgment affirmed.

MITCHELL, *J.*

I dissent.

BUCK, *J.*

40 [Endorsed:] No. 11314. State of Minnesota, supreme court. State of Minnesota, respondent, *vs.* Paul J. Petit, appellant. Copy of opinion and syllabus. Original. Filed Dec. 2, 1898. D. F. Reese, clerk. October term, A. D. 1898. Mitchell, J.

41 STATE OF MINNESOTA:

Supreme Court, October Term, A. D. 1898.

STATE OF MINNESOTA, Respondent,
vs.
PAUL J. PETIT, Appellant. } No. 14.

Pursuant to an order of court duly made and entered in this cause on the ninth day of January, A. D. 1899, it is here and hereby determined and adjudged that the judgment of the court below herein appealed from, to wit, of the municipal court of the city of Minneapolis, sitting within and for the county of Hennepin, be, and the same hereby is, in all things affirmed.

Dated and signed this ninth day of January, 1899.

By the court:

[Seal of the Supreme Court, State of Minnesota.]

Attest: D. F. REESE, *Clerk.*

42 [Endorsed:] 11314. State of Minnesota, supreme court. Transcript of judgment. Filed January 9, A. D. 1899. D. F. Reese, clerk.

STATE OF MINNESOTA, } ss:
Supreme Court, }

I, D. F. Reese, clerk of said supreme court, do hereby certify that the foregoing is a full and true copy of the entry of judgment in the cause therein entitled, as appears from the original remaining of record in my office; that I have carefully compared the within copy with said original, and that the same is a correct transcript therefrom.

Witness my hand and the seal of said supreme court, at the capitol, in the city of St. Paul, this ninth day of January, A. D. 1899.

D. F. REESE, *Clerk.*

43 STATE OF MINNESOTA:

Supreme Court, October Term, A. D. 1898.

STATE OF MINNESOTA, Respondent, } No. 14. Appeal from
vs. Municipal Court.
PAUL J. PETIT, Appellant. }

CITY OF MINNEAPOLIS, }
County of Hennepin. }

This cause having been duly argued and submitted at the general October term of this court, A. D. 1898, upon the return to the appeal herein:

Now, after full and mature deliberation had thereon, it is here and hereby ordered that the judgment of the court below herein appealed from be, and the same hereby is, in all things affirmed, and that the respondent above named have judgment accordingly.

Entered January 9th, A. D. 1899.

By the court:

[Seal of the Supreme Court, State of Minnesota.]

Attest: D. F. REESE, *Clerk.*

I hereby certify that the foregoing is a full and true copy of the original order for judgment entered in the above-entitled cause.

Attest: D. F. REESE, *Clerk,*
By J. L. HELM, *Deputy.*

44 [Endorsed:] No. 11314. State of Minnesota, supreme court. Copy of order for judgment. Filed January 9, A. D. 1899. D. F. Reese, clerk.

45 STATE OF MINNESOTA:

Supreme Court, General October Term, A. D. 1898.

FRIDAY MORNING, 9.30 O'CLOCK, *November 11th, A. D.* 1898.

Court convened pursuant to adjournment, all the justices being present.

STATE OF MINNESOTA, Respondent,
vs.
PAUL J. PETIT, Appellant. } Cal. No., 14; Reg. No., 11314.

This cause came on to be heard this day upon the return to the appeal herein.

Thereupon the same was submitted to the court for decision upon paper book and briefs of counsel and taken under advisement.

A true record.

[Seal of the Supreme Court, State of Minnesota.]

Attest: D. F. REESE, *Clerk.*

The foregoing is a full and true copy of the minutes of argument in the above-entitled cause.

Attest: D. F. REESE, *Clerk.*

46 [Endorsed:] State of Minnesota, supreme court. State of Minn., respondent, *vs.* Paul J. Petit, appellant. Copy of minutes of argument. Filed Jan. 9, A. D. 1899. D. F. Reese, clerk.

47 [Endorsed:] No. 11314. State of Minnesota, supreme court. State of Minnesota, respondent, against Paul J. Petit, appellant. Judgment-roll. Filed January 9, 1899. D. F. Reese, clerk.

48 STATE OF MINNESOTA:

Supreme Court.

STATE OF MINNESOTA,
Office of Clerk of Supreme Court, } *ss:*

[Ten-cent U. S. internal-revenue stamp, canceled 1, 9, '99. D. F. R.]

I, Darius F. Reese, clerk of the supreme court, State of Minnesota, do hereby certify and return to the Supreme Court of the United States that the foregoing and annexed transcript of record is a full and complete transcript of the record, judgment, judgment-roll, and all of the proceedings had in the said supreme court of the State of Minnesota in the case between The State of Minnesota, respondent, and Paul J. Petit, appellant, including the opinion of the said supreme court therein, as appears from the original files and records; and I do further certify and return that I have annexed to said transcript and included therewith and that the foregoing are copies of the petition for writ of error, with allowance of same, and of the

assignments of error, and of the bond, as the same remain on file and of record in said supreme court of the State of Minnesota, and are the original writ of error from the Supreme Court of the United States and the original citation issued thereon, with proof of service thereof, and that the foregoing constitutes a true, full, and complete return to said writ of error.

Seal of the Supreme Court, State of Minnesota.

In witness whereof I have hereunto set my hand and the seal of said supreme court of the State of Minnesota, at the capitol, at St. Paul, Minnesota, this 9th day of January, A. D. 1899.

DARIUS F. REESE,
Clerk of the Supreme Court, Minnesota.

Endorsed on cover: File No., 17,273. Minnesota supreme court. Term No., 194. Paul J. Petit, plaintiff in error, *vs.* The State of Minnesota. Filed January 21, 1899.